

**David Abraham Samson Paul v Syed Shahir bin Syed
Mohamud (suing in his capacity as the President of the
Malaysian Trades Union Congress) & Ors**

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-04-690
OF 2010

RAUS SHARIF, RAMLY ALIAND SYED AHMAD HELMY JJCA
16 MARCH 2012

Legal Profession — Professional discipline — Misconduct — Retention of purchase monies as legal fees — Disciplinary Committee and High Court found appellant guilty — Whether High Court judge and Committee erred in their findings — Whether there was failure to consider relevant evidence — Whether appellant entitled to right of set-off — Whether penalty imposed appropriate — Solicitors' Account Rules 1990 r 7(a)(v) — Legal Profession Act 1976 s 94(3)(c)

The Malaysian Trade Union Congress ('the complainant') lodged a complaint against the appellant, a practicing advocate and solicitor, for not accounting for monies received by him in his capacity as their solicitor and in particular to the failure to account for the sum of RM750,000. The appellant had acted for the complainant in the sale of the MTUC building pursuant to a sale and purchase agreement ('the SPA') and the sum of RM750,000, which represented part of sale of the property, was allegedly retained by the appellant for real property gains tax ('RPGT'). When the complainant was granted exemption from RPGT, it requested for the release of the RM750,000 and the accrued interest thereon. However, the appellant responded that the RM750,000 was never retained for RPGT and was to be used in payment of the appellant's interim fees. Disciplinary proceedings were instituted against the appellant by the Majlis Peguam ('the third respondent'). The Disciplinary Committee ('DC') found the appellant guilty of contravening s 94(3)(c), (k), (m), (n) and (o) of the Legal Profession Act 1976 ('the Act') and recommended that the appellant be struck off the rolls of Advocates and Solicitors. This finding and order was endorsed by the Disciplinary Board. The appellant applied to set aside the order of the Board but the High Court, which found that the appellant had breached the provisions of the SPA in the manner in which he retained and deducted the monies for his legal fees, upheld the board's decision. This was the appellant's appeal against the decision of the High Court. In support of his right to set-off the RM750,000 for his interim fees, the appellant relied upon a letter written by him to the complainant confirming an agreement that his fees would be deducted from the monies received from the sale of the property and also a statutory declaration affirmed by the then secretary general of the complainant ('the SD'). The appellant submitted that the DC and the High Court had failed to appreciate the evidence that was favourable to his case,

A namely the letter and the SD, and that this severely prejudiced his case. The appellant also relied on r 7(a)(v) of the Solicitors' Account Rules 1990 ('the Rules') to justify his right to set-off.

B **Held**, dismissing the appeal with costs in the sum of RM1,000 to the first and second respondents:

C (1) It was the view of this court that the DC had considered the appellant's letter to the complainant and found that the letter did not give him blanket authority to deduct his fees or interim fees as and when he liked. Further the DC and the High Court had concluded that the evidence of the then secretary general of the complainant had no bearing on their decision. Hence the DC and the High Court had considered the letter and the SD and no prejudice was occasioned to the appellant (see paras 20–21).

D (2) A plain reading of r 7(a)(v) of the Rules showed that two requirements had to be satisfied before this rule could apply. Under the rule the appellant had to show proof of delivery of the bill of costs and evidence of the fact that the complainant had been notified that the RPGT monies retained by him would be applied towards the bill of costs. The evidence adduced fell short of the fulfillment of these two pre-requisites. Both the DC and the High Court had found that the appellant had exercised his right to set-off his legal fees from the RPGT sum without delivering his bill of costs and notifying the complainant of his intention to do so (see paras 23–24).

F (3) The DC and the High Court had not erred in the conduct of the hearing and in the application of the relevant legal principles. The findings of the DC, which was affirmed by the High Court, was in accord with the evidence adduced and the sentence passed did not warrant any appellate interference (see para 26).

G (4) When considering the appropriateness of the penalty imposed, the court would need to consider not only the interests of the appellant but also the wider interests of the public and of the profession. There was an element of deceit and dishonesty present in the instant case which justified the conclusion of the findings of both the DC and the High Court of transgression of s 94(3)(c) of the Act. The appellant, who had a long standing relationship with the complainant, ought to have been forthright and transparent in his dealings and discharged his duties diligently instead of misconducting himself in the manner he did (see paras 30, 35 & 36).

[Bahasa Malaysia summary]

Kongres Kesatuan Sekerja Malaysia ('pengadu') telah membuat aduan terhadap perayu, yang beramal sebagai peguambela dan peguamcara, untuk

tidak menyumbang wang yang diterima olehnya atas sifatnya sebagai peguam mereka dan khususnya bagi kegagalan untuk akaun berjumlah RM750,000. Perayu telah bertindak untuk pengadu dalam penjualan bangunan MTUC menurut perjanjian jualan dan pembelian ('SPA') dan jumlah RM750,000, yang mewakili sebahagian daripada penjualan harta, didakwa disimpan oleh perayu untuk keuntungan cukai harta tanah ('CKHT'). Apabila pengadu telah diberikan pengecualian daripada RPGT, ia diminta untuk dilepaskan daripada RM750,000 dan faedah terakru. Walau bagaimanapun, perayu membalas bahawa RM750,000 tidak pernah dikekalkan untuk RPGT dan akan digunakan dalam pembayaran yuran interim perayu. Prosiding tatatertib telah dimulakan terhadap perayu oleh Majlis Peguam ('responden ketiga'). Jawatankuasa Tatatertib mendapati perayu bersalah kerana melanggar s 94(3)(c), (k), (m), (n) dan (o) Akta Profesion Undang-Undang 1976 ('Akta') dan adalah disyorkan bahawa perayu hendaklah dipotong keluar daripada senarai peguambela dan peguamcara. Dapatan dan perintah ini telah disahkan oleh Lembaga Tatatertib. Perayu telah memohon untuk mengetepikan perintah Lembaga tetapi Mahkamah Tinggi, yang mendapati bahawa perayu telah melanggar peruntukan SPA dalam cara di mana dia mengekalkan dan menolak wang untuk yuran guamannya, telah mengekalkan keputusan Lembaga. Ini adalah rayuan perayu terhadap keputusan Mahkamah Tinggi. Sebagai sokongan untuk haknya *set off* RM750,000 bagi bayaran interimnya, perayu bergantung kepada surat yang ditulis olehnya kepada pengadu mengesahkan perjanjian bahawa yuran akan ditolak daripada wang yang diterima dari jualan harta dan juga suatu akuan berkanun yang diikrarkan oleh ketua setiausaha pengadu ('SD'). Perayu menghujahkan bahawa DC dan Mahkamah Tinggi telah gagal untuk menghargai bukti yang memihak kepada kes, iaitu surat dan SD, dan bahawa ini telah memprejudiskan kes. Perayu juga bergantung pada kaedah 7(a)(v) Kaedah-Kaedah Akaun Peguamcara 1990 ('Peraturan') untuk membenarkan haknya untuk menolak.

Diputuskan, menolak rayuan dengan kos sebanyak RM1,000 kepada responden pertama dan kedua:

- (1) Adalah menjadi pandangan mahkamah ini bahawa DC telah mempertimbangkan surat perayu kepada pengadu dan mendapati bahawa surat tidak memberinya perlindungan pihak berkuasa memotong yuran atau bayaran interim dan apabila dia suka. Tambahan lagi DC dan Mahkamah Tinggi telah membuat kesimpulan bahawa bukti Setiausaha Agung pengadu tidak mempunyai kaitan dengan keputusan mereka. Oleh itu, DC dan Mahkamah Tinggi telah mempertimbangkan surat tersebut dan SD dan tidak menjejaskan telah disebabkan kepada perayu (lihat perenggan 20–21).
- (2) Satu bacaan yang jelas kaedah 7(a)(v) Kaedah-Kaedah menunjukkan bahawa dua keperluan mestilah sebelum peraturan ini boleh memohon. Di bawah perintah perayu terpaksa menunjukkan bukti penyerahan bil

- A kos dan bukti hakikat bahawa pengadu telah diberitahu bahawa wang CKHT yang disimpan olehnya akan digunakan ke arah bil kos. Keterangan yang jatuh pendek memenuhi kedua-dua pra-syarat. Kedua-dua DC dan Mahkamah Tinggi telah mendapati bahawa perayu telah melaksanakan haknya untuk menolak yuran guamannya daripada jumlah CKHT tanpa menyampaikan bil kos dan memaklumkan pengadu mengenai niatnya untuk berbuat demikian (lihat perenggan 23–24).
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- (3) DC dan Mahkamah Tinggi tidak terkhilaf dalam menjalankan perbicaraan dan dalam aplikasi prinsip-prinsip undang-undang yang berkaitan. Penemuan DC, yang disahkan oleh Mahkamah Tinggi, adalah sejajar dengan keterangan yang dikemukakan dan hukuman yang dijatuhkan berlalu tidak mewajarkan campur tangan rayuan (lihat perenggan 26).
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- D (4) Apabila menimbang kesesuaian penalti yang dikenakan, mahkamah perlu mempertimbangkan bukan sahaja kepentingan perayu tetapi juga kepentingan awam dan profesion yang lebih luas. Terdapat unsur penipuan dan kecurangan hadir dalam kes ini yang membenarkan kesimpulan penemuan kedua-dua DC dan Mahkamah Tinggi pelanggaran s 94(3)(c) Akta. Perayu, yang mempunyai hubungan lama yang dengan pengadu, sepatutnya telah berterus terang dan telus dalam urusannya dan melepaskan tugasnya dengan tekun bukannya menyalahkan dirinya sepertimana yang lakukan (lihat perenggan 30, 35 & 36).]
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Notes

For cases on misconduct, see 9 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1745–1820.

G Cases referred to

A Practitioner, Re (1984) 36 SASR 591 (refd)
Bolton v Law Society [1994] 2 All ER 486, CA (refd)
Law Society of Singapore v Ravindra Samuel [1999] 1 SLR 696, HC (refd)

H Legislation referred to

Legal Profession Act 1976 ss 93, 94(3), 94(3)(c), (k), (m), (n), (o), 103B
Solicitors' Account Rules 1990 r 7(a)(v)

I Appeal from: Originating Motion No R4–17–12 of 2010 (High Court, Kuala Lumpur)

(Sreenevasan Young) for the appellant.
(P Kuppusamy & Co) for the first and second respondents.
(JT Chong Associates) for the third respondent.

Syed Ahmad Helmy JCA:

[1] The appellant, a practising advocate and solicitor was found guilty of professional misconduct consequent to a disciplinary enquiry conducted by the Disciplinary Committee ('Committee') pursuant to s 103B of the Legal Profession Act 1976 ('LPA'). In finding the appellant guilty for contravention of s 94(3)(c), (k), (m), (n) and (o) of the LPA, the committee recommended that the appellant be struck off the rolls of advocates and solicitor which finding and recommendation was endorsed by the Disciplinary Board ('Board') constituted under s 93 of the LPA who made an order accordingly on the 5 February 2010 ('the order'). The order of the board was appealed against to the High Court but was dismissed on the 20 February 2010.

[2] Dissatisfied with the orders of the board and the court below the appellant pursued his appeal before us. After hearing the parties, we adjourned the matter for our consideration and decision. We now give our decision and the reasons for the same.

[3] The subject matter of the disciplinary proceedings against the appellant was premised on a written complaint lodged by the Malaysian Trade Union Congress (MTUC) ('the complainant') made on 8 August 1996 against him for not accounting for monies received by him in his capacity as their solicitor and in particular to the failure to account for the sum of RM750,000.

[4] The sum of RM750,000 represents part of the proceeds of sale of the MTUC building (the property) to Thrifty Realty Sdn Bhd for RM15m pursuant to a sale and purchase agreement dated 1 June 1993 (the SPA). The appellant by virtue of having been retained to act for MTUC's other legal matters, acted for MTUC in the sale of the property.

[5] The highlight of the sale transaction was the several provision in the SPA which obligated the appellant to hold the initial payment of RM380,000 as stakeholder and to place the said sum in a deposit account with a bank — see cll 4.1 and 5.4 of the SPA. Clause 6.2.1 provides that no sum is required to be retained by MTUC in the event no real property gains tax (RPGT) is payable. The sale transaction having been completed the balance of the purchase price of RM7,763,934.90 was released to MTUC on 8 August 1995.

[6] Coming back to the sum of RM750,000 the appellant had by letter dated 18 November 1994 to MTUC informed them that the sum was retained by him for RPGT and pending adjudication of RPGT he had placed:

- (a) RM7.5m in a trust account;

- A (b) RM705,785.40 in client account for payment of RPGT, legal fees and expenses; and
- (c) in the event RPGT was not payable the said sum shall be paid to MTUC inclusive of all interest but less legal fees and expenses incurred in the said sale.
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[7] Upon exemption of RPGT being granted MTUC by letters dated 11 September 95, 7 November 1995, 25 January 1996, 20 June 1996 and 4 July 1996 requested for the release of the said sum of RM750,000 and the accrued interest thereon but received no response except for a reply through letter dated 10 July 1996 that the RPGT sum was only a 'reserve figure' for accounting purposes.

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[8] Being stonewalled and not eliciting any response MTUC instructed Skrine & Co to demand for the release which was duly executed by Skrine & Co through their letter dated 15 July 1996.

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[9] The appellant responded to the letter by his reply of 25 July 1996 whereupon he claimed that the sum of RM750,000 was never retained for RPGT and was to be used in payment of the appellant's interim fees, as the final account could not be determined at the material time — hence that accounted for its entry for accounting purposes. The appellant also forwarded interim invoices for work done for the period 1992–1996.

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[10] In advancing his claim that the RPGT sum was offsetted by him for his interim fees he relied on an oral agreement with the then secretary general of MTUC Dr V David as reflected in a letter dated 22 October 1992 written by him to MTUC and also a statutory declaration of Dr V David affirmed on 22 September 1993.

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[11] Since the appellant's defence before the disciplinary committee rested heavily on the letter dated 22 October 1992 and Dr V David's statutory declaration of 22 September 1993 the circumstances behind its evolvment necessitates reflection.

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[12] A very pertinent point that comes to the fore in respect of the letter of 22 October 1992 and the statutory declaration was that it was never produced during the inquiry before the investigating tribunal which had finalised its report on 31 May 2002 nor was it mentioned in the several reply letters of the appellant to MTUC and/or its solicitors. The first time that the said letter surfaced was when it was produced before the disciplinary committee on 25 June 2003 and no explanation as to why it could not be produced earlier

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before the investigating tribunal was forthcoming. The circumstances aforesaid would invariably have a bearing on the weightage to be accorded to it. A

[13] Against the background of the sequential events aforesaid and the contemporary documents adduced and after analysing the evidence proffered the disciplinary committee arrived at the following findings: B

- (a) there are glaring contradictions between the appellant's explanation and the several earlier letters written by him with regards to the RPGT sum;
- (b) there was utilisation of the sale proceeds towards deduction of his fees; C
- (c) failure on the part of the appellant to place the RPGT sums on fixed deposits;
- (d) the letter dated 22 October 1992 written by the appellant to MTUC was not a blanket authority nor an authorisation to the appellant to deduct his fees or interim fees as and when he liked; D
- (e) the lump sum fees of RM281,000 and RM380,000 were grossly excessive in all the circumstances; and
- (f) there was no evidence produced to show that the appellant had notified MTUC that the monies held in his client's account were withdrawn towards payment of costs and fees. E

[14] The High Court at the hearing of the appellant's application to set aside the disciplinary board order upheld the board's decision and concluded that the disciplinary board's findings of misconduct was supported by the evidence and that the appellant breached the provisions of the SPA in the manner in which he retained and deducted the monies for his legal fees. In short there was concurrent findings by the High Court. F

[15] Learned counsel for the appellant in the appeal before us submitted that the nub of the issue for determination was whether the appellant was entitled to set off the three bills of cost which he had rendered to the MTUC — if he was entitled to do so then the MTUC's complaint and subsequent findings of misconduct on the part of the appellant cannot be sustained. It is the submission of learned counsel that based on the evidence placed before the committee and the court below the committee erred in not finding that the appellant has the right of set off. G H

[16] In support of his submission on a solicitor's right of set off learned counsel for the appellant adverted to the following evidence adduced before the disciplinary committee: I

- (a) the letter dated 22 October 1992 from the appellant to MTUC

- A confirming an agreement that appellant's fees and disbursements for all work done shall be deducted from the monies received from the sale of the MTUC building;
- B (b) the statutory declaration of Dr V David dated 22 September 2003 which the appellant contends was overlooked by the disciplinary committee;
- (c) the three bill of costs dated 17 June 1993, 1 August 1994 and 25 September 1994 which the appellant submits were delivered to and received by MTUC; and
- C (d) r 7(a)(v) of the Solicitors' Account Rules.

D [17] In advancing his argument learned counsel stressed that the erroneous appreciation of evidence by both the disciplinary committee and the court below has resulted in evidence favourable to the appellant not being taken into consideration. The misappreciation of evidence relates to the committee's findings that there was no evidence produced to show that the appellant had notified MTUC that the monies held were withdrawn and applied in satisfaction of the costs of fees as contained in the interim bills which finding was occasioned by the oversight of the committee in overlooking the terms of the letter of 22 October 1992 and the evidence of Dr V David. Had this aspect of the evidence which is favourable to the appellant been considered by the committee and by extension the court below would not have fallen into error.

F [18] The appellant's submission of the committee's failure to consider evidence favourable to the appellant was premised on the material discrepancies appearing in the notes of proceedings forwarded to the parties from time to time upon the conclusion of each hearing and that as contained in the bundle of documents forwarded to the appellant by the board pertaining to the record of the evidence of Dr V David at his residence on 10 October 2003. The omission according to learned counsel for the appellant has severely prejudiced the appellant.

H [19] The material discrepancies in the notes of proceedings was addressed by the learned High Court judge who concluded that by reason of the appellant's failure to furnish particulars of the discrepancies and its consequential effect on the disciplinary committee's findings the challenge cannot be sustained. The learned judge in rejecting the challenge though acknowledging that the notes of proceedings of 10 October 2003 on Dr V David's evidence given at his residence was not referred to by the disciplinary committee in its report nevertheless concluded the failure as such had no bearing on the disciplinary committee's findings. The court reasoned that the disciplinary committee had taken into consideration the effect of the appellant's letter of 22 October 1992 and hence no prejudice can be said to be occasioned — see p 29 of the appeal record. As stated in the earlier part of our judgment the evolvment and timing

of the surfacing of the letter of 22 October 1992 was fraught with suspicion occasioned by the absence of its mention in the replies to the several written complaints and demands of MTUC and to the investigating tribunal. It is laced with an element to deceive and his conduct unbefitting of an advocate and solicitor falling within the scope of s 94(3) of the Legal Profession Act 1976.

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[20] In our view the consideration of the letter aforesaid evidences the disciplinary committee's acceptance that the letter correctly records the subject matter of the teleconversation namely the evidence of Dr V David given at his house on 10 October 2003 and in the statutory declaration dated 22 September 2003. Hence no prejudice is caused to the appellant. The point to note is the unmistakeable explicit finding of the disciplinary committee that the letter did not give the appellant blanket authority to deduct his fees or interim fees as and when he liked.

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[21] Further the disciplinary committee's and High Court's conclusion that the evidence of Dr V David has no bearing on its decision emanated from the disciplinary committee's visit to Dr V David where from the evidence recorded by disciplinary committee it can be inferred his incoherent and unreliable behaviour.

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[22] Adverting to the appellant's reliance on r 7(a)(v) of the Solicitors' Account Rules 1990 to justify his entitlement to 'set-off' regretfully it cannot be countenanced as the successful invocation of the rule requires the fulfilment of the prerequisites therein.

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[23] Rule 7(a)(v) of the Solicitors' Account Rules 199 provides as follows:

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7 Drawing of money from client account

There may be drawn from client account

(a) in the case of client's money —

(v) money properly required for or towards payment of the solicitor's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held by him will be applied towards or in satisfaction of such costs.

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[24] From a plain reading of the section two requirements must be satisfied, namely proof of delivery of the bill and the RPGT monies held will be applied towards such costs. The evidence adduced falls short of the fulfilment of the two pre-requisites above. The disciplinary committee and the court found that

A the appellant had off setted his legal fees from the RPGT sum without delivering his bill of costs and notifying MTUC of his intention to do so.

[25] The appellant's counsel in the course of his submission sought to capitalise on the learned High Court judge's decision overruling the findings of the disciplinary committee on the excessiveness of the three bills and its consequential unfairness and prejudicial effect to the appellant as misconduct under s 94(m) of the Legal Profession Act. Though the learned High Court judge ruled as erroneous the committee's findings of the excessiveness of the three bills and its prejudicial effect nevertheless in our view the ruling aforesaid of the High Court judge does not negate the whole order as it is only limited to one category of misconduct namely that of sub para (m) of s 94(3) of the LPA. The other acts of misconduct found by the committee under s 94(3)(c), (k), (n) and (o) of the LPA remained intact and was affirmed by the learned judge as appears in her grounds of judgment at pp 32–33 of the appeal record where she stated:

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The cumulative effect of the appellant's wrongful conduct in retaining and deducting his client's money, a case of misconduct under s 94(3)(c)(k)(n) and (o) of the Legal Profession Act 1976 has been made out. There is no misdirection committed by the DC as alleged by the appellant that warrant interference by this court.

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[26] We have scrutinised the appeal record in depth and given serious consideration to the submissions both oral and written made by the parties and it is our unanimous view that both the disciplinary committee and the court below did not err in the conduct of the hearing and its application of the relevant legal principles. The findings of the disciplinary committee which was affirmed by the High Court was in accord with the evidence adduced and the sentence passed does not warrant any appellate interference.

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[27] The appellant it should be recalled was found guilty of misconduct under four sub-paragraphs of s 94(3) of the LPA, namely:

- (c) dishonest or fraudulent conduct in the discharge of his duties;
 - (k) breach of any provision of the Act or of any rules thereunder or any direction or ruling of the Bar Council;
 - (n) gross disregard of his client's interests; and
 - (o) being guilty of any conduct which is unbecoming of an advocate and solicitor or which brings or is calculated to bring the legal profession into disrepute.
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[28] The definition of misconduct is laid down in s 94(3) of the LPA. It means conduct or omission to act in Malaysia or elsewhere by an advocate and

solicitor in a professional capacity or otherwise which amounts to grave impropriety and includes the 15 instances as detailed therein. The definition aforesaid is not exhaustive and being widely worded would clearly encompass both dishonest conduct in the discharge of professional duty and fraudulent conduct or conduct otherwise unbefitting a solicitor and the conduct of the appellant herein falls within the scope.

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[29] We shall now address the issue of the appropriate penalty. Learned counsel for the appellant in his address on the penalty imposed urged us that the circumstances of the case does not warrant the extreme punishment of being struck off the rolls to be imposed.

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[30] The appropriateness penalty issue would invariably involve consideration of not only the interests of the appellant but also the wider interests of the public and the profession. The legal profession is a honourable one which holds a very commanding and respectable standing in society as it is one of the vehicles for the pursuit of justice. Hence honesty and integrity is a cardinal characteristic of this noble profession which plays an indispensable part in the administration of justice.

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[31] In deciding the appropriateness of the penalty it is instructive to appraise ourselves of the guidelines laid down by the following two cases.

[32] In *Bolton v Law Society* [1994] 2 All ER 486 Sir Thomas Bingham MR at p 491 said:

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Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the solicitors disciplinary tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the roll of solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking-off order will not necessarily follow in such a case, but it may well.

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[33] In *Re A Practitioner* (1984) 36 SASR 591 which was a case of criminal misappropriation of monies by a solicitor, King CJ at p 593 stated:

- A I cannot regard suspension as an adequate response to the type of unprofessional conduct in which this practitioner engaged. *The proper use of suspension is, in my opinion, for those cases in which a legal practitioner has fallen below the high standards to be expected of such a practitioner, but not in such a way as to indicate that he lacks the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner.*
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[34] The principles on disciplinary sentencing as distilled from the authorities aforesaid are two fold:

- C (a) where a solicitor has acted dishonestly, the appropriate order is struck off the roll of solicitors; and
- (b) if a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness he will nonetheless be struck off the roll, as opposed to merely being suspended, if his lapse is such as to indicate that he lacks the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner.
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- E [35] The absence of any finding of dishonesty does not per se make the sentence of being struck off the rolls excessive for the court has in the absence of dishonesty struck off the roll an advocate and solicitor who had fallen below the standards of integrity, probity and trustworthiness — see *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR 696.
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- [36] Applying the principles aforesaid to the facts of this case as we have related in the earlier part of the judgment herein that there is an element of deceit and dishonesty being present which in our view justified the conclusion of the findings of both the committee and the High Court of transgression of sub-para (c) of s 94(3) of the LPA — the misconduct is of such a nature that it warrants a penalty which have not only a punitive affect but a deterrent one. The appellant who had a long standing relationship with MTUC should be forthright and transparent in his dealings and discharge his duties promptly, conscientiously, and diligently instead of misconducting himself in the manner he did.
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- [37] We do not see any justification for us to interfere in the penalty meted out which in our view is appropriate and just in the circumstances of the case. The appeal is accordingly dismissed with costs. As the third respondent is not claiming any costs no order as to costs is made in favour of the third
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respondent. The first and second respondent is awarded costs in the sum of RM1,000. Deposit to the first and second respondent to account of fixed costs.

Appeal dismissed with costs in sum of RM1,000 to first and second respondents.

Reported by Kohila Nesan

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